



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,392	08/05/2005	Benedict Shia	20518/59 (S-8490 US)	1773

7590 04/09/2009
Edward Scott Jarmolowicz
Tyco Healthcare Group
15 Hampshire Street
Mansfield, MA 02048

EXAMINER

MOULTON, ELIZABETH ROSE

ART UNIT	PAPER NUMBER
----------	--------------

3767

MAIL DATE	DELIVERY MODE
-----------	---------------

04/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/532,392	Applicant(s) SHIA ET AL.	
	Examiner ELIZABETH R. MOULTON	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-21, 24-29 and 32-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-21, 24-29 and 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/11/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 March 2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7, 8, 11-21, 23-29, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuson et al (US 3,957,082) in view of Kee et al (US 5,309,902).

4. Fuson teaches a valve comprising a housing (11) including a first end (29) and a second end (at 43), and a first passageway (21+55+15/17/19) that extends there along, the housing further including a first port (37) and a second port (39); and a valve member (45) disposed within the housing and moveable (rotatable) thereto, the valve member defining a portion of the first passageway (55) that includes a first opening (proximal opening) and a second opening (distal opening) having a greater dimension

than the first opening (Fig 8), wherein the valve member is rotatable to establish sealed fluid communication between the first opening and either the first or second port, while maintaining continuous communication with the second opening and the first passageway.

5. Fuson does not teach a second passageway as claimed.

6. Kee teaches a nasogastric dual lumen catheter (73) with a connector (67) for attaching a suction control valve thereto. The connector housing (66) includes a first passageway (72) and a second passageway (77), which are separate. Fig 9. Any suction control valve may be used with the connector 67.

7. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the valve of Fuson as a suction control valve with the connection housing of Kee as a matter of simple substitution of one known device (medical control valves) for another. Additionally, the valve of Fuson provides extra safety features such as the visible indicia (Fig 4) to help the user determine which ports are connected to the passageway. In connecting the valve of Fuson with the connection housing of Kee, the second end (43) of the housing of Fuson would be inserted into the connector 67 of Kee.

Claims 2-5, 7, 8, 13, and 14: see Fuson Fig 2-4. Claim 11: Kee Fig 9. Claim 12: Fuson third port 43, tubing 21. Claim 15: the terms "relief port", "suction port" and "introduction port" are intended use terms and any port is capable of performing the functions or being used as a "relief" "introduction" or "suction" port. Claim 27-29: Kee Fig 9. Claim

33, 34: Kee valve 80. Claim 19: see flexible tubing 68 which is capable of flexing (slit 70 opens and closes and is flexible) as the valve is rotated.

1. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuson and Kee as applied to claims above, and further in view of Atkinson et al (US 5,261,459).

2. Fuson and Kee do not teach a slit valve for closing the first port, only a luer cap. Atkinson teaches a well known type of slit valves, the duckbill valve. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a duckbill valve instead of a luer cap as an alternate means of sealing the first port to prevent contaminating the valve.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuson and Kee as applied to claims 1 and 5 above, and further in view of Segien (US 5,741,003).

3. Fuson and Kee do not teach a depressible button for locking the valve in place. Fuson relies on detents to prevent inadvertent movement of the valve. Segien teaches a water control valve with depressible buttons (142) to allow rotation of the valve member (104). Fig 5. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the depressible button of Segien to lock the valve housing in place as a simple substitution of one safety feature (detents) for another (button lock) which reasonable expectation of success.

Response to Arguments

9. Applicant's arguments with respect to claims 1-9, 11-21, 23-29 and 32-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MOULTON whose telephone number is (571)272-9970. The examiner can normally be reached on 7:00-3:30 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELIZABETH R MOULTON/

Examiner, Art Unit 3767

Application/Control Number: 10/532,392
Art Unit: 3767

Page 6

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767